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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re Marriage of SHANNA J.
and CHARLES A. HAMM.

2d Civil No. B292908
(Super. Ct. No. SD037480)
(Ventura County)

SHANNA J. BURCAR,

Respondent,

v.

CHARLES A. HAMM,

Appellant.

This is the latest in a series of unsuccessful appeals brought by Charles Hamm (Hamm). All of the appeals arise from proceedings he filed against his former wife, Shanna Burcar (Burcar). In this case, Hamm moved for an order requiring Burcar to reimburse him for a debt arising from a mortgage modification and to assess Burcar with one-half of the parties' tax

liability. The trial court applied Family Code section 2556¹ on omitted liabilities. The court assessed Burcar one-half of the mortgage modification debt and none of the taxes. Hamm appeals. Burcar did not file a respondent's brief. We affirm.

FACTS

Loans on House

Hamm alleged Burcar breached their marital settlement agreement (MSA) because she failed to pay a debt she assumed. The MSA awards a house in Big Bear Lake, California to Burcar, and Burcar agreed to assume all debts related to the property.²

At the time the parties entered into the MSA, Hamm represented that the loans on the property were current and a loan modification was in progress. The loans were in Hamm's name and Burcar did not participate in negotiating the terms of the loan modification.

Hamm claims he completed the loan modification, but the property was lost to foreclosure because Burcar did not pay the loans. Hamm's motion alleges that as a result of the loan modification, he was pursued by a collection agency for \$6,826.84. When the trial court asked what the amount was for, Hamm replied, "The cost of redoing the note, I guess." Burcar declared that she had no knowledge of the debt at the time she signed the MSA.

The trial court concluded Hamm's claim constituted an omitted community debt. The trial court found that the debt did

¹ All further statutory references are to the Family Code.

² We take judicial notice of the parties' MSA. In all other respects, Hamm's request for judicial notice filed on April 2, 2019, is denied.

not exist at the time the parties entered into the MSA, Burcar had no information on the loan modification unless it was provided by Hamm and no input on the terms of the modification. Although Hamm claimed reimbursement for \$6,826.84, he settled the debt for \$2,048.02. The court concluded Burcar owes one-half of that amount, \$1,024.01, to Hamm.

Taxes

Hamm requested that Burcar pay one-half of the income taxes from 2006 and 2007.

In 2009, Burcar sent an email to Hamm asking if he had a plan for filing taxes, and advising him she needed to do something quickly. She suggested that she file married filing separately, and he could claim all the deductions and dependents. Hamm replied that Burcar should do what she needed to do. Burcar did what she said she would do. Hamm did not file his 2006-2007 returns until 2018, and therefore he incurred significant interest and penalties.

The trial court found that it is not clear what the tax obligation would have been if Hamm had cooperated with Burcar in the filing of their taxes. The court applied its equitable powers under Family Code section 2556 and denied Hamm's request for contributions from Burcar.

Sanctions

Burcar requested that the trial court impose sanctions against Hamm under section 271. The trial court found that sanctions were warranted, but imposed none because Hamm had filed for bankruptcy.

DISCUSSION

Section 2556 provides: "In a proceeding for dissolution of marriage . . . the court has continuing jurisdiction to award

community estate assets or community estate liabilities to the parties that have not been previously adjudicated by a judgment in the proceeding. A party may file a postjudgment motion or order to show cause in the proceeding in order to obtain adjudication of any community estate asset or liability omitted or not adjudicated by the judgment. In these cases, the court shall equally divide the omitted or unadjudicated community estate asset or liability, unless the court finds upon good cause shown that the interests of justice require an unequal division of the asset or liability.”

Here the trial court found both the debt related to the house and the taxes were omitted community liabilities and applied section 2556.

House

Hamm argues the debt related to the house was not an omitted liability. He points to the MSA where Burcar agreed to assume debts related to the house. But the trial court could reasonably interpret the MSA as applying only to debts in existence at the time the parties entered into the agreement. Burcar did not agree to assume personal liability for a debt that did not yet exist and that arose as a result of husband’s unilateral act in agreeing to a modification in which she had no input.

Hamm simply failed to prove to the trial court that the debt was in the contemplation of the parties at the time the parties entered into the MSA. Hamm could not even tell the trial court specifically what the debt was for. When the trial court inquired, Hamm replied, “The cost of redoing the note, I guess.” That is far from a convincing showing.

Taxes

Hamm argues that the trial court erred in refusing to assess Burcar one-half of the tax liability. But section 2556 allows the trial court on finding good cause to make an unequal division of the parties' liabilities in the interest of justice. Good cause has no precise definition, but generally it means a legally sufficient ground or reason for an action. (*In re Marriage of Leonard* (2004) 119 Cal.App.4th 546, 558.) Here the trial court found that Hamm refused to cooperate with Burcar in filing their taxes, filed his taxes years after they were due and incurred substantial interest and penalties that are difficult to separate from the taxes. The trial court had good cause to refuse to assess any of the tax liabilities to Burcar.

Sanctions

The trial court did not impose sanctions on Hamm because he is under the protection of the automatic stay of bankruptcy. Unless and until the trial court imposes sanctions, Hamm is not aggrieved. Only an aggrieved party has the right to appeal. (See *Winter v. Gnaizda* (1979) 90 Cal.App.3d 750, 754.)

DISPOSITION

The judgment (order) is affirmed. Hamm is to bear his own costs on appeal.

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GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

JoAnn Johnson, Judge

Superior Court County of Ventura

Charles A. Hamm, in pro. per., for Appellant.
No appearance for Respondent.